

In the Matter of License ~~Ze 4104825~~ ~~Marshall McNeil Seaman Documents~~

Issued to: Joseph Harold Worrel

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1103

Joseph Harold Worrel

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 6 August 1958, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. Three specifications allege that while serving as Junior Third Assistant Engineer on board the United States SS HAWAIIAN RETAILER under authority of the license above described, on or about 25 November and 7 December 1957, Appellant was under the influence of intoxicating liquor while in charge of the engine room watch; on or about 10 December 1957, Appellant was asleep in the engine room while in charge of the watch.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although repeatedly advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to each specification except the one alleging the offense on 10 December to which he entered a plea of guilty.

The Investigating Officer introduced in evidence certified excerpts from the Shipping Articles and Official Logbook of the ship in addition to the deposition of the Chief Engineer and First Assistant Engineer taken by interrogatories and cross-interrogatories.

In defense, Appellant offered in evidence his sworn testimony. He testified that, on 25 November, the boiler filled up when he was concentrating on trying to find out what had caused the steam pressure to drop; on 7 December, the Chief Engineer accused Appellant of filling the dead boiler with water but later found out that the boiler was full when Appellant went on watch.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and three specifications had been proved. He then entered an order suspending Appellant's license for twelve months and all other documents for a period of two months.

FINDINGS OF FACT

Between 6 November and 23 December 1957, Appellant was serving as Junior Third Assistant Engineer on board the United States SS HAWAIIAN RETAILER and acting under authority of his License No. 195845 while the ship was on a foreign voyage.

On 25 November, the ship was under way at sea. Appellant was intoxicated while standing his regular 2000 to 2400 watch in charge of the engine room. The odor of liquor was on his breath, he talked incoherently and his language was slurred. Both boilers were full and the water was carrying over to the main engines and the generators. When asked what was causing the trouble, Appellant replied that he did not know. The machinery was not operating properly and Appellant was incapable of assuming the responsibilities of his watch.

On 9 December while in the port of Kushiro, Japan, Appellant was asleep during his regular 1600 to 2400 port watch in charge of the engine room. When awakened, Appellant appeared to be in a drunken stupor and he was again incapable of assuming his responsibilities.

Appellant's prior record consists of probationary suspension in 1956 for failure to perform his duties, intoxication and leaving the engine room while on watch.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Due to the severity of the suspension imposed, Appellant requests that he be given an opportunity to refute the charges and contents of the deposition at a time when he is represented by counsel.

OPINION

There are no findings above with respect to the offense alleged to have been committed on 7 December because of the obvious confusion in the two depositions between the events of 7 December and 9 December. (The latter is the actual date of the incident which Appellant entered a plea of guilty.) The chief Engineer at first testified that, on 7 December, he found Appellant attempting to fill the dead boiler with water; but in answer to Appellant's cross-interrogatories, he admitted that he later found out that the boiler was full when Appellant went on watch (as Appellant had testified) and then went on to state that Appellant was asleep on watch on 7 December. Hence, I do not agree with the Examiner's statement that the testimony was not altered as a result of the cross-interrogatories. The First Assistant also testified that Appellant was asleep on watch on 7 December. Both deponents agreed that the machinery was operating properly on this date.

The testimony indicates that the Chief Engineer's recollection as to what occurred on 7 December was poor since it was self-contradictory as to whether Appellant was awake or asleep when the Chief Engineer went to the engine room. The memory of the First Assistant seems to have been even worse as to 7 December since his testimony on this point appears to be a recitation of what

occurred on 9 December according to the logbook. Log entries were made with respect to both 7 and 9 December but they are not considered to be reliable enough to resolve this conflicting testimony and establish the incident of 7 December as a separate offense because neither entry was read to Appellant until 14 December.

For these reasons, the finding that the offense alleged to have taken place on 7 December was proved is reversed and the specification is dismissed.

As indicated in the above findings of fact, the evidence supports the allegations as to 25 November, and the offense of 9 December was proved by the plea of guilty.

Since Appellant's right to counsel was mentioned by the Examiner a second time during the hearing after he became aware of the seriousness of the charges, there is no merit in Appellant's suggestion that he should now be granted another hearing with the benefit of counsel. In addition, the two depositions and the related log entry are consistent with respect to the 25 November incident.

The offenses found proved are certainly of a serious nature since Appellant endangered the entire operating plant of the ship on two separate occasions. Although these offenses are adequate to uphold the entire twelve months' suspension, particularly in view of a prior similar offense in 1956, the suspension will be modified proportionately (one of three specifications dismissed) in consideration of Appellant's satisfactory service during the lapse of time since these incidents occurred almost two years ago.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 6 August 1958 is modified to a suspension of eight (8) months against License No. 195845 and all other licenses issued to Appellant. The suspension of Merchant Mariner's Document No. Z-420412-D4 and all other documents issued to Appellant, other than licenses, shall remain effective for a period of two (2) months.

As so MODIFIED, said order is

AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 3rd day of August, 1959.